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SERIAL NUMBER 087110,274	FILING DATE 08/23/93	FIRST NAMED INVENTOR RIGG	ATTORNEY DOCKET NO. R 930316EA
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12M2/0323

DRE, D EXAMINER

PATENT DEPARTMENT  
UNILEVER UNITED STATES, INC.  
45 RIVER ROAD  
EDGEWATER, NJ 07020

ART UNIT  
1203

DATE MAILED: 03/23/95

03/23/95

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

This application has been examined

Responsive to communication filed on 1/6/95.  This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), 0 days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

**Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:**

1.  Notice of References Cited by Examiner, PTO-892.
2.  Notice re Patent Drawing, PTO-948.
3.  Notice of Art Cited by Applicant, PTO-1449.
4.  Notice of Informal Patent Application, Form PTO-152.
5.  Information on How to Effect Drawing Changes, PTO-1474.
6.

**Part II SUMMARY OF ACTION**

1.  Claims 12-17 and 19-21 are pending in the application.

Of the above, claims \_\_\_\_\_ are withdrawn from consideration.

2.  Claims \_\_\_\_\_ have been cancelled.

3.  Claims \_\_\_\_\_ are allowed.

4.  Claims 12-17 and 19-21 are rejected.

5.  Claims \_\_\_\_\_ are objected to.

6.  Claims \_\_\_\_\_ are subject to restriction or election requirement.

7.  This application has been filed with Informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8.  Formal drawings are required in response to this Office action.

9.  The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are  acceptable.  not acceptable (see explanation or Notice re Patent Drawing, PTO-948).

10.  The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_ has (have) been  approved by the examiner.  disapproved by the examiner (see explanation).

11.  The proposed drawing correction, filed on \_\_\_\_\_, has been  approved.  disapproved (see explanation).

12.  Acknowledgment is made of the claim for priority under U.S.C. 119. The certified copy has  been received  not been received  been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_

13.  Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

1. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

2. Claims 12-17 and 19-21 are rejected under 35 U.S.C. § 103 as being unpatentable over Klein et al, in view of Krauss et al (,262) and Erdtmann, all of record for the reasons, of record.

Applicants arguments addressed to the pertinence of the references of record and the rejection of record, have been considered, but the same are not convincing. Applicants urging that the Klein et al reference of record is not pertinent is not convincing. Klein is still considered pertinent, because the concept of dispensing a liquid product such as, skin lotions is taught. See col. 2, lines 24-30. Further, the concept of having four different containers is taught. See col.7, lines 59-65. Krauss et al remains apposite, since the concept of adding cosmetic additives to a cosmetic base. Applicants urging that makeup foundations are not suggested is not convincing, since the

disclosure teaches adding selected additives to cream bases. It is well known in the cosmetic art that facial foundations can be in cream bases. Contrary to applicants urging otherwise Erdtmann remains pertinent since the concept of dispensing a facial foundation which matches an individual consumer's skin type and which can be labelled and dispensed for a specific consumer.

Accordingly, the rejection of record is maintained.

No claim is allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dale Ore whose telephone number is (703) 308-1235.

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March 15, 1995